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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRIAN F. FITZPATRICK, MADDY SHEPROW,
CHRISTINE M. LADAGE, DAVE SCHULZ, and FRAN
SCHUSTER

Appeal 2010-006555
Application 10/675,916
Technology Center 3600

Before: HUBERT C. LORIN, ANTON W. FETTING, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants seek our review under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1, 3-25, and 27-47. Claims 2, 26, and 51-81 are canceled and claims 48-50 are withdrawn. We affirm.

THE CLAIMED INVENTION

Appellants claim a platform system and method for extending measured performance and subjective reward and recognition and use of a resource of motivational programs (Spec.[0002]). Claim 1 is illustrative of the claimed subject matter:

1. A system for extending sales and use of a resource of programs comprising:

a resource of programs for participation by participants, wherein a participant has one or more participant accounts;

a platform for providing access to the resource of programs through one or more interfaces via a network, said programs to be operated on the platform;

an administrative interface for use by an administrator for interfacing with the platform, the administrative interface for permitting the administrator to:

access the programs via the platform,

select for a client a particular program from the accessed programs,

wherein the client has one or more client accounts and wherein the selected particular program is operated by the platform,

configure the selected, particular program of the client,

track the configured program of the client, and

consolidate the client accounts of two or more programs of the client or consolidate participant accounts of two or more programs in which the participant is enrolled;

a site coordinator interface for use by a site coordinator for interfacing with the platform, the site coordinator interface for permitting the site coordinator to:

- access a particular program via the platform,
- support the particular program of a client via the platform,
- administrate the particular program on the platform,
- track progress of the particular program on the platform,
- issue discretionary awards for the particular program from the platform,
- export data from the particular program on the platform,
- calculate awards relating to the particular program on the platform, and
- fulfill orders of the particular program via the platform; and

a participant interface for use by participants of a particular program for interfacing with the platform, the participant interface for permitting each participant of the particular program to:

- access the particular program via the platform; and
- review information relating to the accessed, particular program via the platform.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Eggleston

US 6,061,660

May 9, 2000

REJECTIONS

The following rejections are before us for review.

The Examiner rejected claims 1, 3-10, 13-25, and 27-47 under 35 U.S.C. § 102(b) over Eggleston.

The Examiner rejected claims 11 and 12 under 35 U.S.C. § 103(a) over Eggleston.

ISSUES

Did the Examiner err in rejecting claims 1, 3-10, 13-25, and 27-47 under 35 U.S.C. § 102(b) over Eggleston as anticipating a platform for providing access to a resource of programs for extending sales given that Eggleston discloses a collection of system hardware and software components to operate its incentive programs.

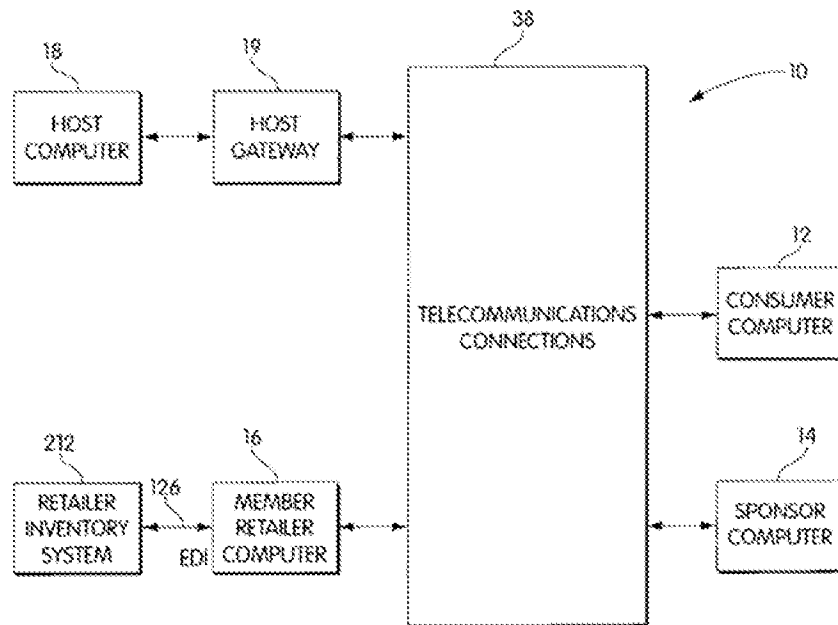
Did the Examiner err in rejecting claims 1, 3-10, 13-25, and 27-47 under 35 U.S.C. § 102(b) over Eggleston as anticipating three interfaces to perform a list of functions, since Eggleston discloses providing a graphical user interface, and discloses each of the listed functions being performed by its system?

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence.

1. The Specification does not define the term “platform” but only generally describes it in the context of an “enterprise technology platform 100 is a program-based application implemented by software programs 101 including a resource 102 of motivational programs. A software platform 103 executed by one or more servers controls the operation of the enterprise technology platform 100.” (Spec. ¶ [0041]).
2. The Appellants Figure 1 illustrates “platform 100” as a combination of computerized hardware and software systems.

3. The Specification describes by example three platforms in Figure 1 as enterprise technology platform 100, software programs 101, platform 101, and software platform 103 (Spec. ¶ [0041]).
4. Eggleston discloses a platform at Figure 2:



Eggleston's platform as shown in Figure 2.

5. Eggleston discloses *a platform for providing access to the resource of incentive programs*, in that it discloses its “[s]ystems and methods according to the present invention allow a consumer who has access to a computer, the computer typically referred to as a ‘client,’ to connect to a web site located on a server of a host system for participating in incentive programs.” (Col. 6 ll. 1-5).
6. Eggleston discloses an embodiment with options for purchasing or creating an incentive program to be run on a sponsor's web site, stating, “[w]hether the sponsor purchases a pre-packaged incentive program or chooses to build an incentive program, the completed incentive program

is downloaded to the sponsor for installation on a web site of the sponsor.” (Col. 14 ll. 50-53).

7. Eggleston discloses programs operated on a platform comprised of:

a host computer connected to a network, a client computer of a consumer connected to the network, a sponsor computer of a sponsor connected to the network, an incentive participation application program for participation by the consumer in an incentive program, wherein the participation may be in incentive programs of a plurality of sponsors, a server of the host computer, a web site, located on the server of the host computer, wherein the consumer may participate in an incentive program via the web site”

(Col. 6 ll. 31-40).

8. The Specification does not define or describe the term *interface*.
9. The ordinary and customary definition of the term “interface,” as defined by Merriam Webster’s Collegiate Dictionary (10th ed.), is: “the place at which independent and often unrelated systems meet and act on or communicate with each other.”
10. Eggleston discloses that users interact with the system via a graphical user interface (Col. 6 ll. 5-6).
11. Eggleston discloses *interfaces* with which its system permits “sponsors to build, buy, store, modify, offer, track and administer incentive programs and to permit sponsors and retailers to offer improved award fulfillment for participants in incentive programs.” (Col. 5 ll. 50-54).
12. Eggleston discloses “a database of the host computer of awards associated with the incentive participation application programs, an award association application program for associating an award with an

- incentive program and a fulfillment automation application program for associating a fulfillment method with an award.” (Col. 6 ll. 40-45).
13. The Specification does not define or describe the term *consolidate*.
14. The ordinary and customary definition of the term *consolidate* as defined by Merriam Webster’s Collegiate Dictionary (10th ed.), is: “to join together into one whole : unite.”
15. The Specification describes by example that a client operates an incentive program for participant use, in that “programs are administered by clients 114 which have contracted with the system developer 107 (either directly, through the developer or through a VAR) to provide a motivational or incentive or other program to promote the sales of the client's products or services or to improve the performance of personnel associated with the client.” (Spec. ¶ [0044]).
16. Eggleston discloses *consolidating* client accounts, in that “[s]ingle incentive program types can also be combined to build larger, combined incentive programs” (Col. 31 l. 67 to col. 32 l. 1).

ANALYSIS

Claims 1, 3-10, 13-24

Appellants argue “claims 1 and 25 are unanticipated by and patentable over Eggleston in that Eggleston fails to disclose or teach a centralized platform ...” (Appeal Br. 11). The argument is repeated at Appeal Br. 20-26 and Reply Br. 1-2.

To the extent that Appellants argue a “centralized” requirement, Appellant’s arguments “fail from the outset because . . . they are not based on limitations appearing in the claims . . .,” and are not commensurate with

the broader scope of claim 1 which does not require the term “centralized”, but rather only recites “a platform for providing access to the resource of programs through one or more interfaces via a network, said programs to be operated on the platform.” *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). We find the term “platform” is not defined (FF 1), but is only broadly described as a combination of components of computer hardware servers and software (FF 2, 3). We thus construe “platform” to be the system of computers and attendant software that cooperatively execute applications programs. Based on this claim construction, we find Eggleston discloses a platform with its combination of computers, gateways, and connections (FF 4), thus meeting the claim requirement.

With this understanding, Appellants further argue Eggleston does not disclose the “platform for providing ... said programs to be operated on the platform” requirement because Eggleston “fails to disclose operating/executing the incentive program on the host machine.” (Appeal Br. 14).

We are not persuaded by Appellants' argument, because Eggleston discloses a “consumer ... connect[s] to a web site located on a server of a host system for participating in incentive programs” (FF 5) thus meeting the claim requirements.

Appellants argue Eggleston “refers to a single sponsor building a single incentive program, not a platform for multiple programs.” (Appeal Br. 15).

We are not persuaded by Appellants' argument, because, as set forth above, we construe “platform” as a system that has multiple computers and software instances (FF 1-3), and find that Eggleston discloses a platform

where the incentive program software operates multiple programs at least on multiple computers (FF 4, 5), thus meeting the claim requirement.

Appellants argue Eggleston “teaches away from a centralized platform, as Eggleston instead discloses the purchasing and downloading of a program to a sponsor's processor/site.” (Appeal Br. 18).

We are not persuaded by Appellants’ argument because we find that although Eggleston discloses an embodiment in which programs may be downloaded and operated by individual companies (FF 6), Eggleston also discloses in another embodiment operating a plurality of incentive programs on a server (FF 7), and thus does not teach away because it does not discourage from a “platform” implementation as claimed. “A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Kahn*, 441 F.3d 977, 990 (Fed. Cir. 2006) (citations and internal quotation marks omitted). *See also In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) (noting that merely disclosing more than one alternative does not teach away from any of these alternatives if the disclosure does not criticize, discredit, or otherwise discourage the alternatives).

Appellants also argue “the Examiner uses impermissible hindsight garnered from the claims to read into Eggleston a centralized platform ...” (Appeal Br. 19). The hindsight argument is also applied to “interfaces that permit the consolidation of participant accounts.” (Reply Br. 3).

First, the rejection at hand is based on anticipation under 35 U.S.C. § 102, and is not based on obviousness against which a hindsight argument is

normally made. Therefore, we are not persuaded by Appellants' argument of impermissible hindsight here. Second, we find, as set forth above, that Eggleston discloses a platform as required by the claim, which does not recite that the platform must be "centralized," and interfaces for consolidation, as set forth below.

Appellants argue generally that the three "interfaces" of claim 1 are not disclosed by Eggleston (Appeal Br. 16-17).

In addressing this argument, we preliminarily construe the term "interface" broadly as a programmatic method to interact with software of the platform. This is because we find "interface" is not specifically defined (FF 8), so we rely on the ordinary and customary meaning of "interface," which is "the place at which independent and often unrelated systems meet and act on or communicate with each other" (FF 9). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990). We thus find Eggleston discloses an "interface" at a graphical use interface (FF 10), which we find is how users interact with the system to perform various tasks.

Based on this understanding of claim construction, we address Appellants' arguments to the interface limitation.

Appellants argue Eggleston does not disclose a "participant interface" in the figure cited by the Examiner. (Appeal Br. 17).

We are not persuaded by Appellants' argument, because we find Eggleston discloses users use a GUI (FF 10) and "connect to a web site located on a server of a host system for participating in incentive programs" (FF 5), thus discloses a "participant interface."

Appellants argue Eggleston does not disclose a “site coordinator interface”. (Appeal Br. 31).

We are not persuaded by Appellants' argument, because we find Eggleston discloses an interface having all the functions required by claim 1 associated with the claimed “site coordinator interface” as follows:

- *access a particular program via the platform* (FF 11)
- *support the particular program of a client via the platform* (FF 11)
- *administrate the particular program on the platform* (FF 11)
- *track progress of the particular program on the platform* (FF 11)
- *issue discretionary awards for the particular program from the platform* (FF 12)
- *export data from the particular program on the platform* (FF 12)
- *calculate awards relating to the particular program on the platform* (FF 12)
- *fulfill orders of the particular program via the platform*¹ (FF 12)

We therefore find Eggleston discloses a “site coordinator interface” as claimed.

Appellants argue Eggleston does not disclose the consolidation of client or participant accounts, performed by the administrative interface, because “the cited portion merely indicates that incentive programs can be operated sequentially, such that when a participant completes one incentive program, the participant becomes eligible to participate in a subsequent program.” (Appeal Br. 26).

¹ The phrases listed in italics at each bullet point are each taken from claim 1 and features associated with the site coordinator interface.

We are not persuaded by Appellants' argument. We first find the term “consolidate” is not defined or described in the Specification (FF 13), and we rely on the ordinary and customary meaning of “consolidate,” which is “to join together into one whole : unite” (FF 14). The term “client account” is not defined by the Specification, but a client is described as an entity that provides a motivational or incentive program to promote the sales of the client’s products or services or to improve the performance of personnel associated with the client (FF 15).

We thus find Eggleston discloses incentive programs which we read as “client accounts” because the Specification describes client account in terms of being incentive programs. (FF 11, 15). We further find that Eggleston discloses consolidating client accounts, in that “[s]ingle incentive program types can also be combined to build larger, combined incentive programs” (FF 16). We therefore find Eggleston joins client accounts by permitting two incentive programs to be combined into one. Because the claim requires consolidating either participant *or* client accounts, and we find Eggleston discloses consolidating client accounts, the claim requirement is met.

Appellants next argue Eggleston does not disclose a “site coordinator interface which is different than the administrative interface.” (Appeal Br. 34).

Appellants’ arguments “fail from the outset because . . . they are not based on limitations appearing in the claims . . .,” and are not commensurate with the broader scope of claim 1 which does not recite the word “different”. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

We find rather that Eggleston discloses all the required functions of the administrative interface. Namely, the action to “consolidate” accounts, as set forth above, access the programs (FF 11), track an incentive program (FF 11), and select/configure an incentive program from among several (FF 11). These functions would inherently occur at Eggleston’s interface (FF 10) because that is where the user would have to interact with the system to effect these functions.

We also affirm the rejections of dependent claims 3-10 and 13-24, because Appellants have not challenged these claims with any reasonable specificity (Appeal Br. 37). *See In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987).

Claims 25 and 27-47

Independent claim 25 recites a method with a “providing” and three “permitting” limitations that recite essentially equivalent limitations as claim 1. We affirm the rejection of claim 25 because Eggleston discloses performing these limitations, as set forth above at claim 1. We also affirm the rejections of dependent claims 27-47 that depend from claim 25, because Appellants have not challenged these claims with any reasonable specificity (Appeal Br. 39). *In re Nielson*.

Claims 11 and 12

We also affirm the rejections of dependent claims 11 and 12 that depend from claim 1, because Appellants have not challenged these claims with any reasonable specificity (Appeal Br. 39). *In re Nielson*.

CONCLUSIONS OF LAW

The Examiner did not err in rejecting claims 1, 3-10, 13-25, and 27-47 under 35 U.S.C. § 102(b) over Eggleston.

The Examiner did not err in rejecting claims 11 and 12 under 35 U.S.C. § 103(a) over Eggleston.

DECISION

For the above reasons, the Examiner's rejection of claims 1, 3-25, and 27-47 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

MP